

Appl. No. 10/757,813
Docket No. 7294C
Amdt. dated August 14, 2007
Reply to Office Action mailed on May 14, 2007
Customer No. 27752

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REMARKS

Claim Status

Claims 1-7, 10-12 and 15-17 are pending in the present application. No additional claims fee is believed to be due.

Claims 5 and 15 have been amended. Support for these amendments can be found in at least in the originally filed claim set.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Oath/Declaration

The Office Action states that the oath or declaration is defective. Applicants are in the process of obtaining a new oath or declaration. The oath or declaration will be submitted once it is finalized.

Objections to the Specification

The Office Action states that the specification is objected to because it introduces new matter. Applicants respectfully disagree, but in order to expedite prosecution, Applicants have removed references to the nominal size being the diameter. Therefore, Applicants respectfully request that the objection be withdrawn.

The Rejection under 35 U.S.C. §112, first paragraph

Claims 5 and 15 have been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In response, Applicants have amended Claims 5 and 15 to remove references to the particle size having a diameter.

Applicants contend that the rejection under 35 U.S.C. 112, first paragraph has been overcome. Therefore, Applicants respectfully request that the rejection be withdrawn.

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The Rejection under 35 U.S.C. 103(a) over Thompson et al '208, Thompson '135, Sneyd et al, Moore et al, and Lash.

Claims 1-7, 10-12, and 15-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al., U.S. Patent No. 5,281,208 (hereinafter "Thompson '208"); and thereby Thompson, U.S. Patent No. 3,929,135 (hereinafter "Thompson '135"); Sneyd et al., European Patent No. 0215417 (hereinafter "Sneyd"); Moore et al., U.S. Patent No. 4,898,642 (hereinafter "Moore"); and Lash et al., U.S. Patent No. 4,935,022 (hereinafter "Lash"). Applicants respectfully traverse this rejection, as the references alone, or in combination, do not establish a *prima facie* case of obviousness. Specifically, they do not teach or suggest all of Applicants' claim limitations, as required under MPEP 2143.03.

Thompson '208 alone, or in combination with Thompson '135, Sneyd, Moore, and/or Lash, does not teach or suggest a disposable absorbent article comprising a *topsheet*; a *backsheet* joined with the topsheet; *an absorbent core* disposed between at least a portion of the topsheet and the backsheet; *an acceptance element* disposed adjacent to a body surface of the absorbent core, wherein the acceptance element comprises one or more apertures each having an effective aperture size of between about 0.2 square mm to about 25 square mm; and *a fecal storage element* disposed between at least a portion of the acceptance element and the absorbent core, *wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%*. Therefore, a *prima facie* case of obviousness has not been established.

Claim 1 requires a disposable absorbent article comprising five layers: a topsheet, a backsheet, an absorbent core, an acceptance element; and a fecal storage element. Thompson '208 does not teach or suggest a disposable absorbent article comprising the five layers claimed in the present invention. Rather, Thompson '208 teaches a structure having a topsheet, a layer or "secondary topsheet" comprising capillary channel fibers, a core, and a backsheet. Thus, Thompson '208 teaches a structure having only four layers. The Office Action states that "Thompson et al teaches a disposable absorbent article for wearing on or about a lower torso of a wearer for receiving bodily exudates which

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comprises a topsheet, e.g., 9, a backsheet, e.g., 12, joined with the topsheet, an absorbent core, e.g., at least a layer of 11, an acceptance element, i.e. at least a portion of the topsheet, i.e. disposed adjacent the body surface of the core...and a storage element, e.g., 10 or another layer of 11, between the acceptance element and the core” Applicants respectfully disagree with the Office Action’s characterization of the layers of the Thompson ‘208 structure. The Office Action makes assumptions that the layers of Thompson ‘208 can be divided into sub-layers in order to include all of the layers of the present invention. Applicants contend that Thompson ‘208 does not teach the five distinct layers claimed in the present invention.

This point is particularly relevant to other assertions made in the Office Action. Specifically, the Office Action states that where general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. Applicants contend that general conditions of Claim 1 of the present invention are not disclosed in the prior art, as the prior art does not teach five distinct layers.

Further, Claim 1 requires that the fecal storage element has a compressive resistance of at least about 70%. Thompson ‘208 does not teach or suggest a fecal storage element having a compressive resistance of at least about 70%. The Office Action recognizes that Thompson ‘208 does not teach layers having a compression resistance of at least about 70%. However, the Office Action also states that it would have been obvious to employ a compressive resistance of at least about 70% on the Thompson ‘208 device since it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. As discussed above, Applicants contend that the general conditions of Claim 1 are not disclosed in Thompson ‘208. Further, Applicants have disclosed the criticality of the element of compressive resistance. In addition to the disclosure on page 29, lines 8-23 of the instant specification, page 52, Table VII, and corresponding figures describe the importance of the compressive resistance in the present invention.

In addition, Claim 1 requires that the fecal storage element be disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core. Thompson ‘208 does not teach or suggest a

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fecal storage element as claimed in the present application. The Office Action states three positions in asserting that it would have been obvious to one of ordinary skill in the art to employ the storage element as claimed in the present invention. The position stated in the Office Action is again based on the presumption that the general conditions of the claim are disclosed in Thompson '208. As discussed above, Applicants contend that the general conditions of Claim 1 are not disclosed in Thompson '208.

Further, Thompson '208 is directed to absorbing various body fluids, especially menses. (See Column 1, lines 11-13; Column 13, lines 43-45; Column 31, lines 40-42). Claim 1 is directed to the storage of fecal matter. Page 27, lines 4-20 of the present specification discuss suitable materials for use as the storage element. In order to store fecal matter, the storage element must have a structure that allows for the absorption and storage of fecal matter. Typically, the amount of fecal matter being stored is larger than the amount of menses during a similar event. Thus, not all fibrous layers have the ability to store fecal matter, as required in Applicants' Claim 1. The capillary fibers taught in Thompson '208 are used to transport menses fluid along the length of the fiber, and would not necessarily absorb and store fecal matter as claimed in the present invention.

In addition, Thompson '135, Sneyd, Moore, and/or Lash do not alleviate the shortcomings of Thompson '208, as none of the references teach or suggest a disposable absorbent article comprising a *topsheet*; a *backsheet* joined with the topsheet; an *absorbent core* disposed between at least a portion of the topsheet and the backsheet; an *acceptance element* disposed adjacent to a body surface of the absorbent core, wherein the acceptance element comprises one or more apertures each having an effective aperture size of between about 0.2 square mm to about 25 square mm; and a *fecal storage element* disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%. Because the suggested combination of references fails to teach or suggest all of the claim elements of Claim 1, Applicants assert that Claim 1 is nonobvious over the suggested combination of references. Additionally, because Claims 2-7 depend from Claim 1, Applicants assert that they too are nonobvious over the suggested combination of references for at least all of the reasons provided for Claim 1.

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Claim 10 includes the claim elements presented above with respect to Claim 1, (i.e., a fecal storage element disposed between at least a portion of the acceptance element and the absorbent core, wherein the fecal storage element is separate from the absorbent core, the fecal storage element having a compressive resistance of at least about 70%). As such, Applicants assert that Claim 10 is nonobvious over the suggested references for all of the reasons presented with regard to Claim 1. Additionally, because Claims 11-12 and 15-17 depend from Claim 10, Applicants assert that Claims 11-12 and 15-17 are nonobvious over the suggested references, as well.

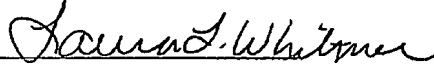
To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Thompson '208 alone, or in combination with Thompson '135, Sneyd, Moore, and/or Lash, does not teach or suggest all of Applicants' claim limitations. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

CONCLUSION

In view of the above, Applicants respectfully submit that each of the issues raised by the Office Action have been addressed. Reconsideration and allowance of the pending claims is respectfully requested.

Respectfully submitted,

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